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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 LANCE IAN OSBAND,

11 Petitioner,

No. CIV S-97-0152 WBS KJM

12 vs.

DEATH PENALTY CASE

13 JOHN STOKES,
14 Acting Warden of San Quentin
State Prison,

Respondent.

ORDER

15 _____/
16 The parties submitted a status report regarding the transcript for the May 2, 2007
17 portion of the evidentiary hearing. The parties state that the file for the May 2 hearing may be
18 recoverable from the hard drive used in the steno machine. They ask that technical consultants
19 for both parties be permitted to work together to attempt to retrieve the file. The parties also
20 state that some portions of the paper notes for May 2 are legible. They ask that those notes be
21 returned to the court reporter for transcription.

22 The undersigned is concerned about the potential loss or destruction of the paper
23 notes and the hard drive. The parties shall adhere carefully to the procedures set out below.

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IT IS HEREBY ORDERED AS FOLLOWS:

1. The court is currently in possession of the hard drive from the steno machine used by Ms. Hernandez during the May 2 hearing. As requested by both parties, Mark Lie of the Federal Defender's Office is permitted to retrieve the hard drive. Mr. Lie shall contact courthouse court reporter Kelly O'Halloran at (916) 448-2712 to arrange to pick up the hard drive. Ms. O'Halloran shall record the date and time of pick-up. Thereafter, counsel for petitioner shall be responsible for keeping a record of the chain of custody of the hard drive. If possible, the hard drive shall be mirrored, or its contents otherwise copied, and the original returned to the court within seven days after Mr. Lie picks it up from the court. If mirroring or copying the hard drive is not possible, then (a) counsel for petitioner shall so inform the court in writing within those seven days, and (b) the parties, and their representatives, shall make every effort to preserve the original hard drive in its original condition so that it may be returned eventually to the court.
2. Because it is possible the file from the May 2 hearing may be recoverable, the court will not order transcription of the paper notes at this time. The paper notes shall remain in the possession of the court.
3. By October 17, 2007, the parties shall file a joint status report on their efforts to retrieve the file of the May 2 hearing.

DATED: October 4, 2007.



U.S. MAGISTRATE JUDGE